

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

NOVEMBER 6, 2003

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T.R.A. DOCKET ROOM

IN RE: Implementation of the Federal ) Docket No. 03-00491  
Communications Commission's Triennial )  
Review Order-9 Month Proceeding-Switching )  
)

**OBJECTIONS OF TALK AMERICA INC. TO  
BELLSOUTH'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Talk America Inc. ("Talk") hereby submits its preliminary objections to BellSouth Telecommunications, Inc.'s ("BellSouth") First Request for Production of Documents to Talk.

Talk files these objections to comply with the procedural orders established by the Tennessee Regulatory Authority ("TRA") in these proceedings. These objections are preliminary in nature. Should additional grounds for objection be discovered as Talk prepares its responses to any discovery, Talk reserves the right to supplement these objections.

Further, at the time of the filing of these objections, the issues to be addressed in this proceeding have not yet been identified. Should additional grounds for objections develop as the TRA identifies the issues to be addressed in this proceeding, Talk reserves the right to supplement these objections.

**GENERAL OBJECTIONS**

Talk makes the following general objections to the Requests:

1. Talk objects to the "Definitions," the "General Instructions," and the individual request items of BellSouth's First Request for Production of Documents to Talk to the extent that they are overly broad, unduly burdensome, and/or oppressive. Talk will attempt to identify specific requests to which this objection applies within the specific objections that follow.

2. Talk objects to the “Definitions,” the “General Instructions,” and the individual request items of BellSouth’s First Request for Production of Documents to Talk to the extent they are irrelevant and not likely to lead to the discovery of admissible evidence. By way of illustration and not limitation, Talk objects to request items that seek materials and documents that are inconsistent with or unrelated to the parameters and methodology of the impairment analysis prescribed by the FCC in its Triennial Review Order. Talk will attempt to identify individual requests to which this general objection is applicable within the specific objections that follow.

4. Talk objects to the “Definitions,” the “General Instructions,” and the request items of BellSouth’s First Request for Production of Documents to the extent they are vague, ambiguous, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these Requests.

5. Talk objects to the “General Instructions” and the request items of BellSouth’s First Request for Production of Documents to Talk to the extent that they purport to impose discovery obligations on Talk that exceed the scope of discovery allowed by the applicable Tennessee Rules of Civil Procedure.

6. Talk objects to the “General Instructions” and request items of BellSouth’s First Request for Production of Documents to Talk to the extent that the “instructions” purport to seek disclosure of “all” documents, materials or information in Talk’s possession. With respect to any request items that may be applicable to Talk, Talk’s responses will provide all nonprivileged and otherwise discoverable information obtained by Talk after a reasonable and diligent search conducted in connection with the request item. Such search will include a review of only those files that are reasonably expected to contain the requested documents and/or information. To the

extent that “instructions” or individual request items purport to require more, Talk objects on the grounds that compliance would be unduly burdensome, expensive, oppressive, or excessively time consuming, and unnecessary to accomplish BellSouth’s legitimate discovery needs.

7. Talk objects to BellSouth’s First Request for Production of Documents to the extent that the request items seek discovery of materials and/or information protected by the attorney/client privilege, the work product doctrine, the accountant/client privilege, or any other applicable privilege.

8. Talk objects to BellSouth’s First Request for Production of Documents to the extent that the request items would require disclosure of information that constitutes trade secrets and/or confidential and proprietary information that should be disclosed either not at all, or only pursuant to the terms of a mutually acceptable confidentiality agreement and the TRA’s rules and orders governing confidentiality

9. Talk objects to BellSouth’s First Request for Production of Documents to the extent that the request items would require the production of materials and/or information that already is in BellSouth’s possession or is in the public record before the TRA. To duplicate information that BellSouth already has or is readily available to BellSouth would be unduly burdensome and oppressive.

10. Talk objects to BellSouth’s First Request for Production of Documents to the extent BellSouth seeks to impose an obligation on Talk to respond on behalf of subsidiaries and/or former officers, employees, agents, and directors on the grounds that such requests for production are overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

11. Talk interprets the requests to relate to Tennessee intrastate matters, and shall respond accordingly.

12. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds that the terms are subject to differing interpretations.

13. Talk objects to the use of the term “batch hot cut” on the ground that the terms is subject to differing interpretations.

### **SPECIFIC OBJECTIONS**

Talk hereby incorporates the above general objections by reference. In addition, Talk asserts the following specific objections:

**REQUEST NO. 1:** Produce all documents identified in response to BellSouth’s First Set of Interrogatories.

Talk objects to the extent the request seeks confidential, proprietary, or privileged documents. Talk also incorporates by reference any and all objections that Talk raised in response to BellSouth’s First Set of Interrogatories.

**REQUEST NO. 2:** Produce every business case in your possession, custody or control that evaluates, discusses, analyzes or otherwise refers or relates to the offering of a qualifying service in the State of Tennessee.

Talk objects on the grounds that the request seeks discovery of documents that are unrelated to the analysis the TRA will conduct, irrelevant to the issues in the case, and not reasonably calculated to lead to the discovery of admissible evidence, inasmuch as the FCC ruled that the impairment analysis is not to be based on individual carriers’ business models. Talk also

objects on the grounds the request seeks the disclosure of confidential and proprietary business information.

**REQUEST NO. 3:** Produce all documents referring or relating to the average number of access lines you provide to end user customers in Tennessee to whom you only provide qualifying service.

Talk objects on the grounds that the request seeks discovery of information already in BellSouth's possession. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for "all" documents is overbroad and unduly burdensome. Talk objects to the use of the terms "qualifying service" and "nonqualifying service" on the grounds the terms are subject to differing interpretations.

**REQUEST NO. 4:** Produce all documents referring or relating to the average monthly revenues you receive from end user customers in Tennessee to whom you only provide non-qualifying service.

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for "all" documents is overbroad and unduly burdensome. Talk objects to the use of the terms "qualifying service" and "nonqualifying service" on the grounds the terms are subject to differing interpretations.

**REQUEST NO. 5:** Produce all documents referring or relating to the average monthly revenues you receive from end user customers in Tennessee to whom you provide both qualifying and non-qualifying service.

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations.

**REQUEST NO. 6:** Produce all documents referring or relating to the average number of access lines you provide to end user customers in Tennessee to whom you provide both qualifying and non-qualifying service.

Talk objects on the grounds that it seeks discovery of information already in BellSouth’s possession. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations.

**REQUEST NO. 7:** Provide all documents referring or relating to the classifications used by Talk America to offer service to end user customers in Tennessee (e.g., residential customers, small business customers, mass market customers, enterprise customers, or whatever type of classification that you use to classify your customers).

Talk objects on the grounds the request for “all” documents is overbroad and unduly burdensome.

**REQUEST NO. 8:** Produce all documents referring or relating to the average acquisition cost for each class or type of end user customer served by Talk America, as requested in BellSouth's First Set of Interrogatories, No. 34.

Talk objects on the grounds the request seeks confidential, proprietary, or privileged documents. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for "all" documents is overbroad and unduly burdensome. Talk incorporates by reference any and all objections that Talk raised in response to BellSouth's First Set of Interrogatories.

**REQUEST NO. 9:** Produce all documents referring or relating to the typical churn for each class or type of end user customer served by Talk America, as requested in BellSouth's First Set of Interrogatories, No. 35.

Talk objects to the extent the request seeks confidential, proprietary, or privileged documents. Talk also objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for "all" documents is overbroad and unduly burdensome. Talk incorporates by reference any and all objections that Talk raised in response to BellSouth's First Set of Interrogatories.

**REQUEST NO. 12:** Produce all documents referring or relating to the cost of capital used by Talk America in evaluating whether to offer a qualifying service in a particular geographic market.

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk objects on the grounds the request for "all" documents is

overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations. Talk objects to the use of the term “cost of capital” on the grounds the term is subject to differing interpretations.

**REQUEST NO. 13:** Produce all documents referring or relating to the time period used by Talk America in evaluating whether to offer a qualifying service in a particular geographic market (e.g., one year, five years, ten years or some other time horizon over which a project is evaluated)?

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk also objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations. Talk objects to the use of the term “geographic market” on the grounds the term is subject to differing interpretations.

**REQUEST NO. 14:** Produce all documents referring or relating to your estimates of sales expense when evaluating whether to offer a qualifying service in a particular geographic market.

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk also objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing



interpretations. Talk objects to the use of the term “sales expense” on the grounds the term is subject to differing interpretations.

**REQUEST NO. 15:** Produce all documents referring or relating to your estimates of general and administrative (G&A) expenses when evaluating whether to offer a qualifying service in a particular geographic market.

Talk objects on the grounds the request seeks the disclosure of confidential and proprietary business information. Talk also objects on the grounds the request for “all” documents is overbroad and unduly burdensome. Talk objects to the use of the terms “qualifying service” and “nonqualifying service” on the grounds the terms are subject to differing interpretations. Talk objects to the use of the term “general and administrative (G&A) expenses” on the grounds the term is subject to differing interpretations.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

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I hereby certify that on November 6, 2003, a copy of the foregoing document was serviced on the parties of record, via US mail:

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Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

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## CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2003, a copy of the foregoing document was serviced on the parties of record, via US mail:

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